

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
B & S ROCK, INC.,)
)
Appellant,)
)
v.)
)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
)
Respondent.)

PCHB No. 77-72

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

An informal hearing on the appeal of a \$250.00 civil penalty for allegedly violating respondent's visual emission regulations was held before Board members W. A. Gissberg, Chairman, and Dave J. Mooney in Centralia, Washington on September 27, 1977.

Appellant appeared by and through one of its officers, Tom Behrendsen; respondent by its attorney, James D. Ladley.

Having heard the testimony and examined the exhibits, and being fully advised, the Board makes the following

FINDINGS OF FACT

I

Respondent, pursuant to RCW 43.21B.260, has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II

On April 14, 1977 respondent's inspector, while enroute to Longview from Vancouver, observed light brown emissions north of Woodland. Positioning himself on the west side of the highway and Horseshoe Lake and looking in an east, northeast direction for the purpose of making opacity readings,¹ he saw that the emissions were coming from an operating rock crusher visible to him and owned by appellant. The opacity of the emissions were continuous between 8:51 AM and 9:00 AM and varied from at least 35 percent up to 60 percent.

III

Appellant is engaged in the business of rock mining and crushing, and had obtained approval of its application to construct an air contaminant source by respondent's order issued on May 21, 1976. That order² in its Conclusion of Law V, provides:

If when installed, the control system does not control the emissions to zero percent opacity, production equipment will be secured until further control can be added bringing the source into full compliance.

IV

Respondent served its Notice of Violation upon appellant and

1. About 1/4 mile distant from the source of the emissions.

2. Appellant's Exhibit A-2.

1 imposed a \$250.00 civil penalty citing a violation of Section 4.02 of
2 its Regulation 1 which provides in pertinent part:

3 (a) No person shall allow, cause, let, permit, or suffer
4 the emission, for more than three minutes in any hour, of a gas
stream containing air contaminants which is:

- 5 (1) Darker in shade as that designated as No. 2 on the
Ringelmann Chart as published by the United States
Bureau of Mines or;
6 (2) Of such opacity as to obscure an observers view to
7 a degree equal to or greater than smoke shade No. 2
described above.

8 (c) No person shall allow, cause, let, permit or suffer
9 the emission, for more than three minutes in any one hour, of
any air contaminant darker in shade as that designated as No. 1
10 on the Ringelmann Chart . . . installed subsequent to the
effective date of this regulation. . . .

11 V

12 Appellant testified that the rock crusher was not being operated
3 between 8:51 AM and 9:00AM on the date on which the emission was
14 observed. Although appellant's vice president actually and honestly
15 believes that the emissions could not have come from the rock crusher,
16 we find him to be mistaken. We do so because of the fact that six days
17 had elapsed between the day of the emission and the day that appellant
18 first became aware of respondent's contention that an unlawful emission
19 had occurred.³ Thus, the credibility of the vice president's testimony
20 is affected by his ability to have correctly recalled the events that
21 transpired during the morning of April 14, 1977 without benefit of a
22 contemporaneous, written, operational record.

23
24 3. See Respondent's Exhibit R-2 which establishes: the date of
the emission as April 14, 1977; the date of issuance of Notice of
25 Violation as April 19, 1977; that it was first received by appellant
on April 20, 1977.

26 4. There was no evidence that appellant maintained a production or
27 operating log. We must therefore assume there was none.

VI

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

Appellant violated Section 4.02 of respondent's Regulation 1.

II

There being no evidence that the civil penalty was unreasonable, it should be affirmed.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.


Therefore, the Pollution Control Hearings Board issues this

ORDER

The Notice of Violation and civil penalty are affirmed.

DATED this 4th day of October, 1977.

POLLUTION CONTROL HEARINGS BOARD


W. A. GISSBERG, Chairman


DAVE J. MOONEY, Member